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CIVIL AND POLICE JUSTICES.

By reference to Sections 3097 and 3112 of the 1919 Code of the State of Virginia, we find the statutory authorization for our Civil and Police Justice's Courts. Section 3097 provides that in each city containing ten thousand inhabitants, and less than forty-five thousand inhabitants as determined by the last U. S. Census, there shall be elected by the qualified voters of each city on the Tuesday after the first Monday in November, 1921, and every four years thereafter, a special justice of the peace, to be known as the civil and police justice, who shall hold office for a term of four years, and whose term of office shall begin on the first day of January succeeding the election.

The above statutory provision and the provisions following have been much criticized by people who are ignorant of the present conditions existing in the trial of causes, and particularly criminal causes, in the Commonwealth of Virginia. The fundamental idea underlying the above office is to have a court to hear in a judicial manner civil causes up to three hundred dollars, and all violations of municipal ordinances within the city, misdemeanors as specified by the statute, and to make a preliminary hearing in felony causes in a judicial manner. The present situation is a farce and the situation demands attention, and I believe that the above statute is a step in the right direction, and partially remedies the present conditions. Where a warrant is obtained in a civil cause, involving less than three hundred dollars, under the present system, the warrant is tried by the same justice who issues the warrant, who at the time of issuing the warrant heard the plaintiff's side of the case, and who practically acts as counsel for the plaintiff, and unless he thinks that complainant has a good cause, he refuses to issue a warrant, and after having issued a warrant, unless he decides in accordance with the plaintiff, plaintiff thinks that the justice has "gone back" on him. In other words, it places the justice in a position where he is likely to prejudice the cause, either consciously or unconsciously, in favor of the plaintiff, and so often it is apparent that it is consciously done. It frequently happens also that the justice is interested in the claim before the court although this is prohibited by the statute, (Code, Sec. 6019) and hence "judgment for the

plaintiff" is inevitable. Such a condition should not exist. Although the claim is small, the parties thereto should have a trial by a fair and impartial justice who is unfamiliar with the case, until the evidence is presented. It frequently happens also that this justice who is not a lawyer, is not posted as to the law—this more frequently happens than otherwise—and has not sufficient legal training or academic education to grasp the questions involved, legal and otherwise; or it may be that the justice is prejudiced against one of the parties to the litigation, or his representatives, and is so narrow-minded that he is unable to see both sides of the controversy from a judicial standpoint. There is no reason why even the smallest case under our judicial system should not be passed upon by the most capable men, and in a judicial manner, and from a fair and impartial standpoint.

In criminal causes, the same reasons exist, practically as above stated, but the practice is even carried further. Under the present system, as existing in many cities, the office of justice of the peace or police justice, is purely a political office, and frequently is held by appointment instead of election, and the occupant is always supposed to act in conformity with the wishes of the "powers that be", otherwise, he would not be holding his appointment, he would be decapitated at once, but more serious objections exist in case of the police justices and justices of the peace. We frequently find police justices and justices of the peace trying causes without the formality of a warrant, and frequently if there is in existence a warrant, it was a blank taken from a batch of blanks which the police justice has signed up in blank and left with the chief of police to be used in emergencies when the police justice is absent, which practice our Supreme Court of Appeals has "wrung the changes on" in the case of *Johnson v. Comm.*, 126 Va. 770. It frequently happens when representing clients in the Police Court, that if you ask for the warrant, the chief of police, is "amazed". He tells you that the parties are simply "being held for examination" or "the case is being investigated," and if the court is asked for the warrant a like reply is made. As a matter of fact, no warrant is in existence and yet the criminal stands charged in what is supposed to be a court of justice, and ready for trial, on some criminal charge, which he is unable to ascertain from the court, only that

"the case is being examined" or "investigated" or that the party is being "held for examination" and possibly then he is incarcerated. It frequently happens that a party is brought before one of these so-called Courts of Justice, charged with driving around the "Dead Man" in the center of the street, and there being no evidence of such offense, is found guilty of carrying a concealed weapon, or operating a still, anything, just so the defendant is convicted of a crime when brought before the "Bar of Justice" whatever that means. It is a misnomer, and instead of being called a Court of Justice, should be called a Court of Injustice. Practically every known constitutional right of the prisoner is violated, and the great principles of human liberty, and of fundamental right and justice set at naught. As above stated a man who has not committed a crime in the presence of an officer, but is guilty of a misdemeanor, is brought before the "Bar of Justice" without a warrant, and placed on trial for a crime which he cannot ascertain what it is until he hears the evidence. "The case is being examined or investigated" the court will state. The evidence tends to show that the accused was operating a car while intoxicated. The prisoner is fortunate enough to have brought with him his friends who were in the car at the time, and they state that he had not had a drink that day or night, except one small drink of "peruna" or Jamaica Ginger, and the evidence is overwhelming that the defendant is not only not guilty, but that he is innocent of the crime of which he is supposed to be charged, and under every system of jurisprudence known to mankind, is entitled to his discharge, but then the "injustice" steps in, and places the defendant upon the stand, and without advising him of his right to refuse to testify, interrogates him as to all the crimes in the category of criminology, and find out after violating all of his constitutional guarantees, that he has within a year prior thereto, been guilty of operating a car without proper license, and proceeds to impose a fine for the offense, notwithstanding the fact that the defendant has never been charged with such an offense, and did not come prepared to defend such a charge. And it frequently happens that the prisoner is incarcerated at the time of trial and brought from the lockup to answer a charge which he is unable to ascertain its nature, he having been held

without a warrant, or any other process, except by main strength and awkwardness of the police force.

In the Circuit Courts and Corporation Courts or rather in Courts of Justice, before a man is placed upon his trial, a specific charge must be formulated against him, in the shape of an indictment, or information, and if not sufficiently explicit under the ruling of our Court of Appeals, in the case of *Pine & Scott v. Commonwealth*, 121 Va. 812, a Bill of Particulars must be furnished him. If a man is indicted for a misdemeanor by the grand jury, in many cases, the indictment is certified down to a justice of the peace, for trial, and the J. P. must try the defendant on the indictment as certified down, and has no power to amend same, neither has the Circuit Court on appeal from a decision of the justice of the peace, where a warrant has been certified down, to a justice of the peace, and a trial had thereon, and an appeal taken to the Circuit Court. In any way this has been the ruling of the various courts of the Commonwealth. Is there any reason why in the Police Court the law of the land should not be followed, and a warrant actually issued, charging the defendant with the specific offense? If not, why not? Why charge a man in the Police Court with operating a car while under the influence of liquor, and if unable to prove it, yet if it develops on the trial, that this party has not connected up with the sewer, try him for this offense, and convict him? Is this the law of the land? Is this in conformity with our constitutional guarantees? I feel sure, if some of our great constitutional lawyers like Jeremiah Black, only knew how our constitutional rights and guarantees were being violated by these engines of destruction and injustice, that the poor old fellows, although long departed, would turn over in their graves.

It is urged that it is a question of expediency. The law says that it is better that ninety-nine guilty men should escape than that one innocent man should suffer. Why should it not be just as expedient in the Corporation and Circuit Courts? Expediency is no reason why my sacred constitutional rights, and guarantees should be violated. The question of expediency is not to be considered if in doing so, we must nullify principles for which na-

may reign supreme. See opinion in *Johnson v. Comm.*, 126 Va. 770.

In order to eliminate just such conditions as above described Section 3098 has prescribed certain qualifications for the person who occupies this office. He must have practiced law for at least five years, and shall during his term of office, reside in the city for which he is elected, and shall not during the term hold any other office of public trust. What is the object of this provision? The object is to secure the services of a person who has had prior legal experience for at least five years, and has some idea of our system of jurisprudence, and is qualified to pass upon the legal questions involved. This statutory provision excludes him from holding other public offices, in order that he may devote his entire time to the office of civil and police justice. I assume that it was the theory of the law-makers that this office should be open during the entire day, for the dispatch of business, and that the occupant either in person or through his clerk should devote the entire day to the dispatch of business, if necessary.

Section 3099, provides that the officer shall take the usual oaths of office, and give bond in the penalty of two thousand dollars.

Section 3100, provides for the compensation of the occupant by a flat salary to be fixed by the city councils of the various cities. This eliminates the fee system, which seems to have become so obnoxious in the eyes of some people, besides the occupant knows just what compensation he will receive each month for his services. The statute has been attacked on many grounds, but it is urged by some city councils that the office is an additional expense, and the burden of sustaining it should not be borne by the city councils, and many ignorant of the good features of the statute are even in favor of abolishing the office, on account of the fact that it will be an additional expense. This is a boomerang. The office should be self-sustaining, as Section 3104 provides for a fee of fifty cents for each one hundred dollars or part thereof in value on each civil warrant to be paid to the said civil and police justice, which amount is payable into the city treasury, and from which fund, an amount sufficient is derived to support the office. Besides there will be additional fees to be paid into this office, which possibly should be paid into the city treasury,

obtaining better results in the trial of small cases, from a judicial standpoint, the expense will be trivial as compared with the results obtained. This court if properly conducted and on a high basis, free from politics, and free from interference by other courts, and officials, should be the most popular court in the various cities, and eliminate much work from the Corporation and Circuit Courts, because if properly conducted, and engaged only in the trial of causes, its decisions will be less frequently appealed from, and will carry weight and respect. But on the contrary if the court permits itself to be dominated by the Corporation and Circuit Courts, and the judges thereof, and practically be a part and parcel thereof, or permits itself to be engulfed in politics, or to be pulled and hauled by a few friends, it will lose caste and respect in the community, and instead of making the situation better the situation will be far worse. This section also contains an excellent provision, which requires that before the civil and police justice shall receive any instalment of his salary, the said civil and police justice shall certify in writing, that he has disposed of all cases that have been submitted to him for decision more than thirty days prior to the day upon which said instalment falls due. The compensation fixed by the city councils is in lieu of all other amounts to be received from the said city.

Section 3101 provides that the court shall be open for business every day in the year, during business hours, except Sunday, and legal holidays. This section also provides for the appointment by the judge of the Corporation Court, of a substitute civil and police justice, with the same qualifications as the civil and police justice. It does seem that it would have been much better to have permitted the civil and police justice, to select his own substitute, with the same qualifications as himself, instead of giving the authority to the Judge of the Corporation Court. In this way, there would have been eliminated any possibility of domination or interference.

Section 3102 provides for the jurisdiction of the court as follows:

"The said civil and police justice shall be a conservator of the peace within the corporate limits of the city for which he is elected, and for one mile beyond the corporate limits of such city. and within such limits shall have exclusive original jurisdiction

for the trial of all offenses against the ordinances of said city, and shall have concurrent jurisdiction with the corporation court of said city in all cases of violations of the revenue and election laws of the State, except chapter one hundred and eighty-four, and of all offenses arising under the provisions of chapter one hundred and eighty-five, of sections forty-five hundred and seventy-two, forty-five hundred and seventy-three, and forty-five hundred and seventy-four, and, except when it is otherwise specially provided, shall have exclusive original jurisdiction for the trial of all other misdemeanor cases occurring within his jurisdiction.

“The said civil and police justice shall have exclusive jurisdiction in all civil matters cognizable by justices of the peace, for the counties. No other justice of the peace in such city shall hereafter exercise such jurisdiction as is herein conferred on said civil and police justice, except as provided in this chapter.”

Section 3103 is a very important section, and provides that a warrant may be issued by any justice of the peace, of his city, except said civil and police justice, but when so issued, it shall be returnable only before such civil and police justice, for trial, and determination. This is the most important provision in the whole law, that the civil and police justice shall have no authority to issue a warrant under any circumstances, and as he has no authority to try a person except under a warrant, it will eliminate the damnable practice of trying persons except on duly executed warrants, made out, and charging, the specific offense, for which the defendant is sought to be charged, it will eliminate what is known as “investigating the case” or “holding for examination”, by present police justices, which is in derogation of practically every known constitutional right, and an invasion of practically every known legal principle for the protection of human liberty and freedom. Even in case where an officer has arrested a person without a warrant, for an offense committed in his presence, still the officer must obtain a warrant from a justice of the peace, charging the particular offense, and on this warrant the defendant in a criminal case will be tried. It will also prevent these courts of injustice from trying a person on one warrant or examining a person for one charge, and finding him guilty of another, because under our system of jurisprudence, unless a person

is proven guilty of a charge with which he stands indicted, beyond a reasonable doubt he is entitled to his acquittal. Of course, the justice of the peace can formulate as many charges as he pleases, but unless the defendant is charged with an offense in due and ancient form, he cannot be found guilty of that offense, or any other offense, and in accordance with the decision in the case of *Pine v. Commonwealth*, *supra*, is entitled to demand a bill of particulars, if the offense is not described with certainty and definiteness, sufficient to inform him of the charge against him. The rights of the individual are more important than the rights of society in general. It is better that ninety-nine guilty men should escape than that one innocent man should be punished, and it is better that ninety-nine guilty men should escape than that one guilty man should be found guilty except, after "due process of law".

The administration of law should be conducted in an orderly manner, and although at times it may not appear to be expeditious, yet the rights of the individual in small cases is more important than the rights of society in general, and its administration must proceed in an orderly manner, not only in small cases, but in the more serious criminal cases. It is to be hoped that the various civil and police justices, will take the above view of the statutes, and that the various civil and police justice's courts will be real courts, administering justice in a due and orderly manner.

Section 3104, provides that at or before the time of hearing, the plaintiff shall pay to the civil and police justice, a trial fee of fifty cents, for each one hundred dollars in value, or fraction thereof, claimed in the warrant, which sum the civil and police justice, shall pay into the city treasury monthly. This fund is supposed to be providing a fund for the compensation of this officer, however, it is not applicable to criminal causes. The statute does not make any provision for the payment of fees in criminal cases, neither does the statute say anything about the compensation of the justice of the peace issuing the warrant, either civil or criminal. I assume that the justice can charge the present fees allowed by law. Attention is also called to the fact that the trial fees of justices of the peace, have been raised to

one dollar, but whether or not this is applicable to the trial fees of civil and police justices, is doubtful (see Acts 1920, page 804).

Section 3105 relates to the procedure before the court and states that the procedure in this court shall conform with the procedure and practice before justices in warrants, for small claims. Provision is made for the filing of a bill of particulars, and for filing grounds of defense, for the appointment of guardian ad litem for infants, and insane persons. Provision is also made for a writ of fieri facias on the judgments issued by the court, and for reversal of said writ before or after the expiration of one year from the day of the judgment.

Section 3106 provides for appeals and removals. Under this section where there is more than one court in a particular city, the appeal may be to either the corporation or circuit courts. This is an excellent provision. This section provides for the details in case of such an appeal or removal. Another provision in this section worthy of attention is that appeal cases shall not have preference over other cases pending in such appellate courts, as respects the time of trial.

Section 3107 provides for the dismissal of civil claims which have been pending before the court sixty days, by providing that the civil and police justice shall notify the parties that the same will be dismissed in ten days thereafter, unless good cause be shown to the contrary. This is an excellent provision, as it prevents the clogging of the docket, and the stagnation of causes, because attorneys will know that their cases will be dismissed unless properly attended to. This section also provides that all papers except those removed on appeal, and except those papers in criminal cases, which are required to be lodged in the clerk's office, shall be properly indexed, and filed, and preserved, and in claims on which the civil and police justice is given jurisdiction, by a sub section B., of Section 3102, the constable or sergeant serving such papers shall at the time of or before service of same collect from the plaintiff the sum of twenty-five cents to be turned over by said constable or sergeant to the civil and police justice, and taxed as costs for the filing and indexing of said papers, and the civil and police justice shall monthly pay into the

Section 3108 provides that the civil and police justice shall have authority to make and enforce such reasonable rules of practice as are not in conflict of law. Each court and police justice should under this provision study the situation and have entered of record such rules of practice as will expedite business in the court, and copies thereof should be printed, and distributed for the benefit of litigants and attorneys practicing before the court.

Section 3109 provides that each city shall provide a suitable court room, and office, for such civil and police justice, and shall furnish all necessary furniture, books and stationery. Such books shall be under the control of the civil and police justice, and shall remain the property of the city. Under this provision each city should provide a nice, neat clean, and well-lighted, well-ventilated and properly heated court room, constructed on the plan of the most modern court rooms. The room should not only be clean and sanitary, but should be attractive and the business of the court carried on in such a manner, and on such a high plane, that no person will have any hesitancy in appearing therein. The old dark, dingy, poorly heated, and poorly lighted and foul-smelling rooms formerly used should be abolished. The old "bars of justice" which remind one of bar rooms of ancient days, in the various police stations, and bring back to the writer fond recollections in days of old, when one could place his feet on the railing, and lean up against the bar, should be abolished. In one corner of the court room adequate provision should be made for the preservation of the records of the court. It may be necessary to purchase a fire-proof iron safe for this purpose. The office should be provided with all necessary furniture and proper stationery. This office should be provided with at least the following books: Code of Virginia, 1919, Annotated, and the supplements thereto; Waddy's and Mayo's Guides; the official reports to date; and Michie's Encyl. Digest of Virginia and West Virginia Reports, including the supplements thereto, and the incumbent should be charged with the duties of seeing that these books are protected and cared for.

Section 3110, provides for the appointment of a bailiff, his duties and compensation. The appointment is to be made by the

civil and police justice. The civil and police justice should select a good live, active young man, who will attend to the duties of this office in a business-like way, and give prompt attention to his duties, and maintain order and decorum in the courtroom at all times. In making the selection the court should appoint some person who is capable of quickly acquainting himself with the duties of the office, and who will with the justice add bearing and dignity to the court.

The statute does not provide for a clerk. It is assumed that the civil and police justice will do this work himself, and act as his own clerk. I think, however, if the business of the court so justifies it, that later this statute can be amended, by providing for a clerk and compensation therefor. However, a good bailiff could attend to the duties of clerk.

Section 3111 provides that all charter provisions in conflict with this chapter are repealed.

Section 3107 has been amended, by requiring the civil and police justice to collect the fee of twenty-five cents for filing and indexing, each case, which sum shall be paid into the treasury as the statute formerly existed. This fee before this amendment was collected by the constable or sergenat and turned over to the civil and police justice, and then paid into the treasury. This amendment places this duty on the civil and police justice, and is to be commended.

This statute is an excellent statute, and is to be highly commended. It is a step in the right direction in the trial of causes both civil and criminal, which have been formerly tried in the J. P. courts. None of the objections which have been urged against it are sound. On the contrary a court with a competent man at the helm, will be established, and as a result litigants will be able to obtain the benefit of one trained and versed in the law. It should be a court of increasing activity, and if conducted on a high plane, will become thoroughly established in our system of jurisprudence. If this court can be kept out of and above politics, and if the court will refrain from discussing the causes that are to come before it in the advance of hearing, and deal out so far as humanly possible justice, it will command the respect of the community, and serve a real purpose in our system of jurisprudence.

The writer anticipates that this court will be the most popular court in the various cities where it is established, and the incumbent filling this office will be placed on trial to fill higher positions of trust and honor.

When we come to consider the statute or rather the statutes concerning the civil and police justice we must not overlook the fact that the very object of the statute was to establish a trial court to eliminate just such conditions as above enumerated. By the term "trial court" it was proposed to establish a court that would have no authority to issue a warrant, but only authority to try causes after a warrant was issued by a justice of the peace, or other duly constituted officer. It is hoped that the various persons who fill this office, will raise the standard of justice in the trial of small causes, and that litigants having small causes will receive the same attention as litigants having the more important cases. Let us relegate the trial of causes, however small, and particularly criminal causes, without a warrant, to savages and others untrained in a great system of jurisprudence. Let us abolish the iniquitous proceedings of "examining the case" or "holding the defendant for examination", without a formal charge in writing and return to a more enlightening procedure. It might also not be inappropriate *en passant*, to suggest that what is called "the 3rd degree" be abolished. The idea of wringing from a criminal by such methods, a confession is barbarous, and in order to protect persons from such damnable practices, and inquisitions and inquisitorial proceedings at the hand of the police and detectives, the bar of the various circuit courts, that have always stood as a bulwark of freedom and human liberty should protest against such proceedings. Let each civil and police justice begin office actuated by principles of right, justice, and law, and not let his court deteriorate until it has assumed the role of a court of injustice.

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